

46 Am. Jur. 2d Judges § 78

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Judges

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VIII. Liabilities

B. Criminal Liability; Contempt

§ 78. Criminal liability of judge—Liability for judicial acts and official misconduct

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In the absence of statute, judges generally cannot be held criminally liable for any of their judicial acts, however erroneous, so long as they act in good faith.¹ Judges incur no criminal liability in neglecting to perform mandatory duties imposed upon them by statute if the statute does not make a failure to comply with the law an offense.²

On the other hand, a state's penal law may provide criminal penalties for official misconduct.³ In some jurisdictions, judges may be held criminally responsible when they act fraudulently or corruptly.⁴

Caution:

A statute making a willful omission by a public officer to perform duties punishable as a misdemeanor violates a state's constitutional separation of powers provision, as applied to judicial officers engaged in the performance of their official duties, since the executive branch of government may not be given discretion to commence a criminal action against a judge whenever it considers there is a failure to properly perform judicial duties.⁵

Footnotes

- 1 Braatelen v. U. S., 147 F.2d 888 (C.C.A. 8th Cir. 1945); McFarland v. State, 172 Neb. 251, 109 N.W.2d 397 (1961); In re Mattera, 34 N.J. 259, 168 A.2d 38 (1961).
- 2 Com. v. Tartar, 239 S.W.2d 265 (Ky. 1951).
- 3 People v. La Carrubba, 46 N.Y.2d 658, 416 N.Y.S.2d 203, 389 N.E.2d 799 (1979).
- 4 Braatelen v. U. S., 147 F.2d 888 (C.C.A. 8th Cir. 1945); McFarland v. State, 172 Neb. 251, 109 N.W.2d 397 (1961).
- 5 Boags v. Municipal Court, 197 Cal. App. 3d 65, 242 Cal. Rptr. 681 (2d Dist. 1987).

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